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DEC 14 2010

OFFICE OF PETITIONS

In re Application of	:	
Schultz et al.	:	DECISION ON REQUEST
Application No. 10/022138	:	FOR RECONSIDERATION OF
Filing or 371(c) Date: 12/13/2001	:	PATENT TERM ADJUSTMENT
Attorney Docket Number:	:	
ORT-1548	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b) WITHIN THREE MONTHS OF RECEIPT OF THE NOTICE OF ALLOWANCE," filed November 2, 2010. Applicants submit that the correct patent term adjustment to date is 253 days, not 348 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction based upon an assertion that the Office erred in calculating an adjustment of 95 days.

The Application for Patent Term Adjustment under 37 CFR 1.705(b), is **GRANTED**.

BACKGROUND

The application was filed on December 13, 2001. On August 2, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 348 days.

On November 2, 2010, applicants timely submitted the present request for reconsideration of patent term adjustment¹. Applicants assert that the Office erred in calculating an adjustment of 95 days pursuant to 37 CFR 1.702(a)(2), in connection with the mailing of a non-final Office action on May 4, 2006, four (4) months and 95 days after the filing of the non-compliant Appeal Brief. Applicant notes that the non-final Office action was timely filed within four (4) months of the filing of a compliant Appeal Brief, filed January 30, 2006.

OPINION

Applicants' arguments have been carefully considered. A review of Office records confirms that applicants filed an appeal Brief on September 29, 2005. The Appeal Brief was non-compliant.

¹ Office records show that the Issue Fee payment was received in the Office on November 2, 2010.

Applicants were so notified in Notice of Non-Compliant Appeal Brief, mailed January 3, 2006. Applicants thereafter filed a compliant Appeal Brief on January 30, 2006. In response, the Office mailed a non-final Office action on May 4, 2006, within four (4) months of the filing of the compliant Appeal Brief. As such, the adjustment of 95 days pursuant to 37 CFR 1.702(a)(2) is in error and has been removed.

In view thereof, the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is two hundred fifty-three (253) days (558 days Office adjustments – 305 days Applicant delay), subject to any terminal disclaimer.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods at (571) 272-3232.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is positioned above the printed name.

Anthony Knight
Director
Office of Petitions



Patent Term Adjustments



PTA/PTE Information	Patent Term Adjustment	Patent Term Extension
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Application Number*: 10022138 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10022138

Application Filing Date: 12/13/2001	Overlapping Days Between (A and B) or (A and C): 0
Issue Date of Patent:	Non-Overlapping USPTO Delays: 653
A Delays: 149	PTO Manual Adjustment: -95
B Delays: 0	Applicant Delay (APPL): 305
C Delays: 504	Total PTA (days): 253

- - Sorted Column

File Contents History

Action Number	Action Date	Action Code	Action Description	Duration		Parent Action Number
				PTOL	ADPT	
125	12/12/2010	P018	Adjustment of PTA Calculation by PTO			0
126	06/02/2010	MN/n	Mail Notice of Allowance			0
125	07/29/2010	IREV	Issue Revision Completed			0
124	07/29/2010	N/n	Notice of Allowance Data Verification Completed			0
123	07/29/2010	DOCK	Case Docketed to Examiner in GAU			0
123	07/29/2010	ADCE	Allowed Case Returned to the Examiner for Clerical Processing			0
123	07/29/2010	DVER	Document Verification Completed			0
120	07/29/2010	CNTA	Notice of Allowability			0
115	05/03/2010	ELC_RVW	Electronic Review			0
114	05/03/2010	ENL_NTF	Email Notification			0
113	05/03/2010	12/16/2008	Mail DPAT Decision on Appeal - Reversed	24d		81
112	04/29/2010	APDR	BPAT Decision - Examiner Reversed			0
105	09/16/2009	WIDS	Withdrawal of request of appeal			0
111	09/09/2009	AP_DCK_M	Docketing Notice Mailed to Applicant			0
110	09/08/2009	APAS	Assignment of Appeal Number			0
109	08/31/2009	HRBNE	Mail Reply Brief Noted by Examiner			0
108	08/26/2009	RBNE	Reply Brief Noted by Examiner			0
107	08/26/2009	FWDX	Date Forwarded to Examiner			0
104	08/24/2009	APBS	Reply Brief Filed			0
95	08/14/2009	WDC37	Mail Miscellaneous Communication to Applicant			0
94	08/13/2009	HC32	Miscellaneous Communication to Applicant - No Action Count			0
93	07/27/2009	TCRD	Return of Undocketed appeal to the TC			0
92	07/27/2009	PACC	Exam. Ans. Review Complete			0
90	06/22/2009	APEA	Examiner's Answer to Appeal Brief			0
86	04/06/2009	APBR	Appeal Brief Review Complete			0
85	04/06/2009	FWDX	Date Forwarded to Examiner			0
84	03/16/2009	AP.B	Appeal Brief Filed			0
83	03/16/2009	XT/G	Request for Extension of Time - Granted			0
82	12/16/2008	FEE	Fee Payment Recorded (fees filed separately e.g. not with original papers, etc.)			0
81	12/16/2008	11/21/2008	Notice of Appeal Filed	25		79
80	12/16/2008	XT/G	Request for Extension of Time - Granted			0
79	08/21/2008	NCTFR	Mail Final Rejection (PTOL - 326)			0
78	08/18/2008	CTFR	Final Rejection			0
77	08/11/2008	FWDX	Date Forwarded to Examiner			0
74	04/23/2008	A...	Response after Non-Final Action			0
73	03/04/2008	IDSC	Information Disclosure Statement considered			0
73	03/04/2008	HD44	Information Disclosure Statement (IDS) Filed			0
72	03/04/2008	WIDS	Information Disclosure Statement (IDS) Filed			0
71	01/23/2008	NCTFR	Mail Non-Final Rejection			0
70	01/23/2008	CTFR	Non-Final Rejection			0
69	01/08/2008	DOCK	Case Docketed to Examiner in GAU			0
68	10/31/2007	FWDX	Date Forwarded to Examiner			0
66	10/31/2007	FWDX	Date Forwarded to Examiner			0
64	10/31/2007	ADN9	Disposal for a RCE / CPA / R129			0
63	10/16/2007	AHSD	Amendment Submitted/Entered with Filing of CPA/RCE			0
62	10/16/2007	XT/G	Request for Extension of Time - Granted			0
61	10/16/2007	BRCE	Workflow - Request for RCE - Begin			0
60	04/16/2007	04/05/2007	Notice of Appeal Filed	11		57
59	02/13/2007	NCTFR	Mail Final Rejection (PTOL - 326)			0
58	12/14/2006	CTFR	Final Rejection			0
57	12/05/2006	FWDX	Date Forwarded to Examiner			0
56	12/05/2006	11/02/2006	Response after Non-Final Action	33		54
55	12/05/2006	RENA	Mail Notice of Informal or Non-Responsive Amendment			0
54	11/07/2006	FWDX	Date Forwarded to Examiner			0
54	11/02/2006	A.L.	Informal or Non-Responsive Amendment after Examiner Action			0
53	11/02/2006	08/04/2006	Response after Non-Final Action	20		51
52	11/02/2006	XT/G	Request for Extension of Time - Granted			0

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